

COTTONWOOD HEIGHTS

RESOLUTION NO. 2012-35

A RESOLUTION APPROVING AMENDED RULES AND PROCEDURES FOR THE COTTONWOOD HEIGHTS BOARD OF ADJUSTMENT

WHEREAS, on 14 January 2005 the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") enacted Ordinance No. 05-13 creating the City's Board of Adjustment (the "*Board*"); and

WHEREAS, pursuant to section 4 of Ordinance No. 05-13, the Board is required to adopt rules and procedures for the conduct of its meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the Board; and

WHEREAS, the Board heretofore has adopted rules and procedures as required, which have been approved by the Council (the "*Rules*"); and

WHEREAS, City staff has proposed certain modifications to the Rules and has submitted such amended Rules (the "*amended Rules*") to the Council for approval in anticipation of their adoption by the Board; and

WHEREAS, the Council met in a regular meeting on 10 July 2012 to consider, among other things, approving the amended Rules; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the attached amended Rules for use by the Board;

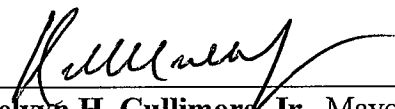
NOW THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached amended Rules are hereby approved by the Council for adoption by the Board.

This Resolution, assigned no. 2012-35, shall take effect immediately upon passage.

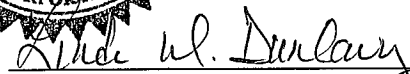
PASSED AND APPROVED this 10th day of July 2012.

COTTONWOOD HEIGHTS CITY COUNCIL

By


Kellvyn H. Cullimore, Jr., Mayor




Linda W. Dunlavy, Recorder

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken <i>Absent</i>	Yea <input type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 10th day of July 2012.

RECORDED this 11 day of July 2012.

581462.1



BOARD OF ADJUSTMENT RULES AND PROCEDURES

I. AUTHORITY

The Board of Adjustment (the “*Board*”) of the city of Cottonwood Heights (the “*City*”) was formed on 14 January 2005 pursuant to the City’s ordinance no. 05-13, as authorized by *Utah Code Ann. section §10-9-701*, as amended. Effective 14 July 2005, the City adopted Title 19 of the *Cottonwood Heights Code* (the “*Code*”), which amended and restated the matters addressed in ordinance no. 05-13, principally due to intervening changes in the Municipal Land Use, Development and Management Act (*Utah Code Ann. section §10-9a-101 et seq.*). These rules and procedures are adopted pursuant to Code ~~section §19.92.050~~.

II. PURPOSE

Upon taking office, all members of the Board shall familiarize themselves with these rules and procedures and, while in office, members shall maintain such knowledge, including knowledge of amendments and additions, and shall be strictly governed thereby in the conduct of Board affairs.

III. ORGANIZATION

Officers and Duties: The Board shall have a chairperson (the “*Chairperson*”) and a vice chairperson (the “*Vice Chairperson*”), who shall be elected by the majority vote of the voting Board members at an election taking place during the second regularly scheduled meeting in January. Nominations for each office shall be received from the voting Board members.

A. The Chairperson and Vice Chairperson shall each serve for a term of one year, beginning the first regular meeting in February.

1. The Chairperson shall preside over all meetings and hearings of the Board and shall execute all official documents and letters on behalf of the Board.

2. The Chairperson shall preserve order, and decide all points of order, subject to appeal of the membership. Such an appeal shall be decided by a majority vote of the members present. The Chairperson may vote on all matters before the Board.

3. In the event of absence or disability of the Chairperson, the Vice Chairperson shall preside. In the absence of both, the members shall appoint a temporary Chairperson for that meeting.

2
4 4. If the Chairperson vacates office before his or her term of office is completed,
6 then the Vice Chairperson will succeed the Chairperson and will serve the unexpired term. A new
Vice Chairperson shall be elected at the Board's next regular meeting to serve the unexpired term of
the (former) Vice Chairperson.

8 B. The Chairperson and/or Vice Chairperson shall assist in the orientation of new Board
members.

10 C. All members of the Board shall recognize the Chairperson as the spokesperson for the
12 Board.

14 Subcommittees: The Chairperson, with the concurrence of a majority vote of the Board, may
create such special subcommittees as he or she may, from time to time, deem necessary or desirable.

16 A. Each subcommittee will be established for a period of not to exceed one year. Each
18 subcommittee will establish its own procedures except that a chairperson for such subcommittee,
appointed by the Board, will report the status of the subcommittee's actions to the Board at a
20 regularly scheduled meeting.

22 B. The chairperson of each subcommittee must be a voting member of the Board.

24 C. Subcommittees may consist of members of the Board or others, approved by the
Board's majority vote.

26 D. All communications from the subcommittees, to outside persons or organizations,
28 must first go through the Board's Chairperson for approval.

30 Appointment of Alternate Members: The City's manager (the "*Manager*"), with advice and
consent of the city council (the "*Council*"), may appoint one or more alternate members of the Board.
32 Such alternate members of the Board may participate in all Board meetings and activities; provided,
however, an alternate member of the Board may only participate as a voting member in the absence
34 of one or more of the Board's five regular members. Participation of alternate members as voting
members shall be as directed by the Chairperson, who shall use reasonable efforts to give all
36 alternate members equivalent opportunities to participate as voting members as occasions arise (due
to unavailability of regular members) over time.

38 IV. EXECUTIVE SECRETARY

40 A. The City's community development director or his designee shall be the Board's
42 executive secretary (the "*Executive Secretary*").

2 B. The Executive Secretary shall provide orientation to new Board members.

4 C. The Executive Secretary shall prepare copies of the Board agenda and deliver the
agenda, together with any other reports, materials and communications pertaining to the agenda, to
6 all necessary parties at least five calendar days prior to each Board meeting. Such materials may be
supplemented thereafter in the Executive Secretary's reasonable discretion.

8 D. The Executive Secretary or his designee shall attend all meetings of the Board.

10 E. The Executive Secretary shall prepare all reports and gather such information as may
12 be necessary for the Board to conduct its business.

14 F. The Executive Secretary shall be responsible for all notification procedures required
by applicable law unless other provisions are established by City ordinance.

16 G. The Executive Secretary shall cause official books of approved minutes, resolutions
18 and ordinances to be created and maintained.

20 **V. LEGAL COUNSEL**

22 A. The city attorney (the "*Attorney*") or his designee shall be the legal counsel for the
Board and its committees.

24 B. The Attorney shall prepare memoranda of law as requested by the Board, and review
26 drafts of ordinances, resolutions, and bylaws, and their amendment.

28 **VI. MEETINGS**

30 The Board shall give notice at least once each year of its meeting schedule for all regular
meetings. Public notice of all meetings shall be provided in accordance all applicable laws.

32 Time and Place:

34 A. Regular public meetings of the Board shall be scheduled on an as needed basis,
36 typically on Thursday, and will start at 7:00 p.m. or as set forth in the annual meeting schedule. The
Board will hold a work session to start one hour before each business meeting of the Board.

38 B. Meetings of the Board shall be held at the locations designated in the public notices of
40 such meetings, which may include the Council's chambers, a conference room in the City's offices,
or any other place.

42 C. A quorum of the Board shall consist of three regular or alternate members. A quorum

shall be necessary to conduct official business.

D. Special meetings for any purpose may be held on the call of the Chairperson or of three regular members of the Board. Board members shall be notified of such meetings by the Executive Secretary, in accordance with all applicable legal requirements.

E. Study/work sessions or field trips can be requested by any voting member of the Board. Requests can be made either in regular meetings or verbally by phone to the Chairperson.

F. All meetings of the Board are open to the public. Except as approved by vote of the Board, public comment is not taken at a study/work session.

Length of Meetings: At midnight the Board will finish the item presently being considered and no additional items will be heard after that time unless there is a motion by a member of the Board requesting to continue the agenda and approved by a majority vote. All items remaining to be heard will be forwarded to the next agenda for consideration.

Time Control: The Chairperson may, at any time, institute measures to control the time for debate on any issue. Care should be taken to insure fairness and consistency in the hearing process. The Chairperson may stop debate once he or she believes the issue has been adequately and fairly heard.

Records: Minutes shall be kept of all Board meetings by a person appointed by the Executive Secretary. Such minutes shall include, but not be limited to:

- A. The date, time and place of meeting;
- B. The names of members present and absent;
- C. The substance of all matters proposed, discussed or decided, and a record, by individual member, of the votes taken; and
- D. City's staff's analysis of each application. A copy of the staff analysis will also be included in each Board member's packet of background information for the meeting.

The minutes are public records and shall be available within a reasonable time after the meeting.

Requirements for the Submission of Requests: The following shall apply to applications made to the Board:

- A. The Board shall adopt standard forms for the submission of requests, with advanced

time requirements.

B. The Executive Secretary shall certify completeness of requests.

C. Any request denied by the Board shall not be resubmitted for a period of six months following such denial.

D. The Board may establish, subject to Council approval, a fee schedule for the submission of requests to cover processing, duplication, and distribution of request and related documents.

Order of Business for regular meeting: The agenda items shall be listed in the following order:

A. Call to Order

B. Approval of Agenda

C. Approval of Minutes

D. Agenda Items

E. Other Business

F. Adjournment

A change in the order of the Board's agenda for a meeting shall be determined by a voice vote of the voting Board members present during the meeting.

The Board may consider add-on items to the agenda if pertinent information is received by the Board members at least 24 hours before the meeting, and the inclusion of the add-on item is properly noticed.

Roberts Rules of Order: The Board hereby accepts Roberts Rules of Order as found in The New Roberts Rules of Order, edited by John Sherman, 1993. Roberts Rules of Order shall be for reference and consulting purposes only and shall not be considered as binding.

VII. VOTING

A. A quorum of Board members must be present and vote in a public meeting for the Board to make a decision.

2 B. Any agenda item must receive three affirmative votes for approval or
recommendation to the Council for approval.

4 C. A voting member's failure or refusal to vote shall be counted as an abstention.

6 D. All votes shall be cast verbally. Each voting member shall either vote for, against or
8 abstain from voting. A Board member should abstain only if he or she has a possible conflict of
interest. If a Board member suspects that he or she may have a conflict of interest under applicable
10 law, such member should consult with the Attorney prior to the scheduled review for advice
regarding the appropriate action to be taken. If a Board member first suspects such a conflict of
12 interest during the meeting in which the matter is being reviewed, then such member should declare
the conflict on the record and should not participate in the discussion or voting on the matter until
14 legal determination is made.

16 E. Motions approved by the Board should clearly indicate the reason(s) for the decision.
The motion, voting results, and the specific reasons justifying the Board's actions shall be included
18 in the minutes of the meeting. Reasons for voting against a motion may also be given. Written
findings may be prepared and approved when appropriate.

20 F. Board members voting in the minority on an issue can request that the minority
22 position be recorded in the minutes of the meeting and may submit a written report of that position to
the Council.

24 G. Whenever possible, decisions concerning applications heard at scheduled meetings
26 shall be rendered immediately following discussion. Decisions on difficult or controversial issues
may be continued until a future scheduled meeting of the Board.

28 **VIII. PARTICIPATION BY STAFF AND PUBLIC**

30 A. No person shall be permitted to speak unless recognized by the Chairperson. Each
32 person speaking before the Board shall first state his or her name and address and then the substance
of his or her remarks.

34 B. Matters before the Board shall be presented in the following manner:

36 1. Presentation by staff

38 2. Presentation by applicant

40 3. Comments and questions by the Board

42 4. Comments from the public, where appropriate and invited by the Chairperson

5. Discussion, motion and vote by the Board

C. Hearings: Hearings before the Board shall be presented in the following manner:

1. Presentation by staff

2. Presentation by applicant, if invited by the Chairperson

3. Presentation~~Testimony~~ by proponents of the request, if invited by the Chairperson

4. Presentation~~Testimony~~ by opponents of the request, if invited by the Chairperson

5. Concluding comments of the applicant, if invited by the Chairperson

6. Concluding comments of staff, if invited by the Chairperson

7. Comments and questions by the Board

8. Closing of the hearing

9. Discussion, motion and vote by the Board

D. The applicant or his designee is required to be in attendance at the Board meeting at which his or her application is being considered.

E. All ~~applicant~~ written submissions by the applicant, the proponents or the opponents of the request shall must be submitted by 5:00 p.m., mountain daylight time, at least three business days before the hearing (i.e.—by Friday, for a hearing occurring on the following Wednesday). Notwithstanding the foregoing, the Board may, by majority vote at the hearing, agree to accept additional written submissions at the hearing if the Board determines that (1) such items are material to its decision; and (2) the submitter was reasonably unable to make such submission by the aforementioned deadline; and (3) the Board will have adequate time to review, consider and discuss such additional submissions before rendering its decision. on the Friday prior to the hearing.

F.E. Other Actions: Other actions which the Board is authorized to take pursuant to applicable law shall be taken in a manner consistent with these rules.

G. Pursuant to *Utah Code Ann.* §10-9a-708, (1) a decision of the Board concerning an

2 | appeal shall take effect on the date that the Board issues a written decision, which shall be issued by
4 | the Board after consideration and affirmative vote in a public meeting within no more than 60 days
6 | after the appeal hearing; (2) the Board's written decision concerning an appeal constitutes the
8 | Board's final decision and final action, notwithstanding any prior verbal decision by the Board; and
10 | (3) the Board's written decision concerning an appeal is the Board's final action for purposes of a
12 | subsequent appeal to district court under *Utah Code Ann.* §10-9a-801 or its successor.

IX. TRANSMITTAL TO COUNCIL

10 | Any matters transmitted to the Council shall be the recommendation of the Board based on
12 | the Board's majority vote.

X. ANNUAL REPORT

16 | The Executive Secretary or his designee shall prepare a brief annual report to be presented to
18 | the Council in February of each year. This report will include information on the number of
20 | applications and actions by the Board and the number of petitions approved, denied, revised or
reversed by the Council or other reviewing authority.

XI. RULES OF ETHICAL CONDUCT FOR THE BOARD

Municipal Officers' and Employees' Ethics Act: The purpose of the Municipal Officers' and Employees' Ethics Act, *Utah Code Ann.* sections 10-3-1301 *et seq.* (the "*Act*"), is to establish standards of conduct for municipal officers and to require disclosure of actual and potential conflicts of interest between each such officer's public duties and personal interests. **Members of the Board are covered by the Act, and familiarity and compliance with the Act is required of all members of the Board. A copy of the current Act is attached to these rules.** Without limiting the specific requirements of the Act, the following general rules of ethical conduct are binding on each member of the Board:

A. Conflicts of Interest. A member of the Board to whom some private benefit may come as the result of Board action should not be a participant in the action.

1. The private benefit may be direct or indirect; create a material or personal gain; or provide an advantage to relations, friends, or to groups and associations which hold some share of the member's loyalty. However, membership itself in a group or organization shall not be considered a conflict of interest as to Board action concerning such group or association unless a reasonable person would conclude that such membership in itself would prevent an objective consideration of the matter.

2. A member experiencing, in his or her opinion, a conflict of interest should declare that interest publicly, abstain from voting on the action, and excuse himself or herself from the room during consideration of the action. The member should not discuss the matter privately with any other Board member. The vote of a member experiencing a conflict of interest who wrongfully fails to disqualify himself or herself shall be disallowed upon motion and affirmative vote of a majority of the balance of the Board.

3. A conflict of interest may exist under these rules although a Board member may not believe he or she has an actual conflict; therefore, a member that has any question as to whether a conflict of interest exists under these rules should raise the matter with the other members of the Board and with Attorney in order that a determination may be made as to whether a conflict of interest exists.

4. No Board member should engage in any transaction in which he or she has a material financial interest, direct or indirect, with the City unless the transaction is disclosed publicly and determined to be lawful.

5. The Council has determined that, in approving appointments to the Board, the Council will not attempt to exclude whole categories or associations of business, professional, or other persons in anticipation of conflict of interest problems. The service of competent people of

2 good character need not be sacrificed. Their withdrawal from participation in matters before the
Board is necessary only in those specific cases in which an actual conflict of interest arises.

4 B. Gifts and Favors. Gifts, favors or advantages must not be accepted if they are offered
6 because the receiver holds a position of public responsibility. The value of a gift or advantage and
the relation of the giver to public business should be considered in determining acceptability.
8 Occasional non-monetary gifts having a value of less than \$50 (such as business lunches, calendars,
or office bric-a-brac) are often, but not always, acceptable. In case of doubt, refuse. In case of
10 marginal doubt, refuse.

12 C. Treatment of Information. It is important to discriminate between information that
belongs to the public and information that does not.

14 1. Reports and official records of a public agency must be open on an equal basis
16 to all inquiries. Official advice should not be furnished to some unless it is available to all.

18 2. Information of private affairs that is learned by a member in the course of
performing official duties must be treated in confidence. Private affairs become public affairs when
20 an official action – such as a zoning change or a plat approval – is requested with respect to them.
Only then is a disclosure of relevant information proper.

22 3. Information contained in studies that are in progress in an agency should not
24 be divulged except in accordance with established agency policies on the release of its studies. A
public agency is not required to do all of its thinking out loud in public.

26 4. Private meetings between a Board member and applicants, their agents, or
28 other interested parties are prohibited. It is inappropriate behavior to receive information from others
(excluding City officers and employees acting in their official capacities) outside Board meetings.
30 Partisan information on any application received by a Board member, whether by mail, telephone, or
other communication should be made part of the public record. Moreover, if the member believes the
32 information impairs his or her ability to make an unprejudiced decision, he or she should recuse
himself or herself from the vote.

34 **XII. RULES GOVERNING ELECTRONIC MEETINGS**

36 Electronic Meetings. Pursuant to *Utah Code Ann. §52-4-207*, the following rules shall govern
38 any electronic meeting of the Board (an “Electronic Meeting”) of the City at which any member(s) of
the Board, or any of the City’s other appointed officers, are participating by means of a telephonic or
40 telecommunications conference. Unless otherwise clearly indicated by the context, capitalized terms
below shall have the same meanings as in *Utah Code Ann. §52-4-207*.

42 A. Board meetings may be conducted by electronic means pursuant to *Utah Code Ann.*

2 §52-4-207.

4 B. Any ~~EE~~Electronic ~~MM~~Meeting of the Board shall be held in strict compliance with the
6 pubic noticing, anchor location and other requirements of *Utah Code Ann.* §52-4-207.

8 C. During an Electronic Meeting, contact shall be established and maintained by
10 telephone, by televised conference, or by any other means of communication by which all of the
12 Board members and other appointed officers of the City that are participating in such meeting may
14 hear each other during the meeting.

16 D. A quorum of at least three (3) members of the Board shall be physically present at the
18 aAnchor lLocation of the Electronic Meeting.

20 E. These rules may be revoked or amended at any time upon written resolution of the
22 Board.

24 **XIII. AMENDMENT OF RULES AND PROCEDURES**

26 The Board may recommend to the Council proposed amendments to these rules and
procedures from time to time. These rules and procedures may be amended at any time by the
Council by resolution or by ordinance, with or without the Board's prior consideration or
recommendation.

WST/CH/499569.43